

The Lundy Packing Company, Inc. and United Food and Commercial Workers Union, Local 204, AFL-CIO, and International Union of Operating Engineers, Local 465, AFL-CIO, Joint Petitioners. Case 12-RC-7606

September 2, 1994

DECISION ON REVIEW, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On May 7, 1993, the Acting Regional Director for Region 12 issued a Decision and Direction of Election in which he directed an election in the petitioned-for unit of production and maintenance employees, excluding, *inter alia*, quality assurance/lab technicians and management trainees I, lab technicians, and industrial engineers. The Joint Petitioners and the Employer filed timely requests for review. By Order dated June 3, 1993, the Board majority¹ denied both requests for review but permitted the electrician A at the Employer's Gold Banner facility, the receiver, industrial engineers, quality assurance/lab technicians, temporary management trainees I, and lab technicians to vote by challenged ballot. The election was conducted on June 3, 1993; the tally of ballots showed 318 votes for Joint Petitioner and 309 against, with 24 determinative challenged ballots. Thereafter, the Employer filed timely objections to the election.

On July 29, 1993, after an investigation, the Regional Director issued a Supplemental Decision on Challenged Ballots and Objections to Election, and Order. The Regional Director overruled the challenges to the ballots cast by the quality assurance/lab technicians, temporary management trainees I, lab technicians, industrial engineers, waste management operator, and receiver, and included them in the unit.² The Joint Petitioners filed a timely request for review of the Regional Director's decision, arguing that these classifications should be excluded from the unit. The Employer filed a statement in opposition to the Joint Petitioners' request for review, and a motion to strike the request for review.³

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ Then-Chairman Stephens and Member Devaney; former-Member Raudabaugh dissenting in part on other grounds.

² The Regional Director also overruled challenges to the ballots cast by the finished product loader/cleaner, and sustained challenges to the ballots of the electrician A and employees McPhail, Valente, and Bradshaw. He further directed that the eligibility of certain alleged discriminatees be determined in the pending unfair labor practice proceeding. No request for review was filed with regard to these rulings.

³ The Employer's motion to strike is denied.

Having carefully considered the entire record,⁴ we have decided to: (1) grant Joint Petitioners' request for review with respect to the Regional Director's finding that the petitioned-for unit of production and maintenance employees also must include the quality assurance/lab technicians, temporary management trainees I, lab technicians, and industrial engineers and, on review, reverse the Regional Director's decision overruling the challenges to their ballots; (2) deny the Joint Petitioners' request for review of the Regional Director's decision overruling the challenge to the ballot of the waste management operator and deny the Employer's request for review of the Regional Director's overruling of the Employer's objections to the election for the reasons stated in his supplemental decision; and (3) find it unnecessary to resolve the challenge to the ballot cast by the receiver because, in view of the above determinations, his ballot no longer is determinative of the election results.

The Employer is engaged in the processing and sale of pork and pork products at its Clinton, North Carolina facility. The Employer's facility consists of two plants: the first contains the processing and shipping areas; the second contains the kill and cut areas. The two plants are connected via a tunnel where the pork products from plant two are conveyed to plant one for further processing and shipment. A hog barn, where hogs are housed for slaughter, adjoins plant two. A separate garage building is physically located between the two plant buildings, and the waste water treatment plant and warehouse are located behind the hog barn. All employees enjoy the same benefits, and all are subject to drug testing and to the Employer's rules and employee handbook. There are no specific plantwide shifts; each department sets its own shifts.

Placement of the Quality Assurance/Lab Technicians, Temporary Management Trainees I, Lab Technicians, and Management Trainees

Quality assurance/lab technicians and temporary management trainees I spend approximately 80 percent of their time on the production floor taking a variety of samples of the working surfaces to which the product will be exposed, testing the housekeeping and cleanliness of the facility, performing inspections, and obtaining weights and temperature of hogs and products. The remaining 20 percent of their time is spent recording the results of their inspections in the office. Lab technicians (a classification separate from that of quality assurance/lab technicians) spend approximately 85 percent of their time in the laboratory doing tests, and the remainder working around the production areas gathering samples. They also prepare paperwork documenting test results. Production and maintenance em-

⁴ See Sec. 102.67(d) of the Board's Rules (the Board may, in its discretion, examine the record in evaluating a request for review).

ployees perform the same type of checks on meat as do the quality assurance/lab technicians, temporary management trainees I, and lab technicians; all fill out the same reports.

Quality assurance/lab technicians, temporary management trainees I, and lab technicians (collectively referred to as technicians) are paid on a coefficient basis, which is not an hourly basis, and record their time on a timesheet. In contrast, production and maintenance employees are hourly paid and punch a timeclock. Technicians do not interchange with production and maintenance employees. Technicians are supervised by the quality assurance/lab manager, under the direction of the research and development director. With respect to transfers, five of the seven current quality assurance/lab technicians and temporary management trainees I transferred directly from production positions, and one transferred from an office position. Technicians are not required to have a college education or technical education. Employees take a math or aptitude test when transferring to a quality-control position. Four employees stated that when they transferred from production to quality assurance/lab technician positions, they received 6 months of on-the-job training. The lab technicians had been assigned to clerical positions before being placed in the lab technician classification; one has an associate degree in accounting, and the other has no education beyond high school. Lab technicians receive several weeks of on-the-job training. Quality assurance/lab technicians and temporary management trainees I are cross-trained and substitute for lab technicians when the lab technicians are absent.

A petitioned-for unit need only be *an* appropriate unit for purposes of collective bargaining, not the most appropriate unit,⁵ and in representation proceedings, the unit sought by the petitioner is always a relevant consideration.⁶ Here, we find, contrary to the Regional Director, that the technicians do not share such an overwhelming community of interest with the petitioned-for production and maintenance employees as to mandate their inclusion in the unit despite the Petitioners' objections. The technicians are separately supervised, are paid differently than the petitioned-for employees, and interchange with each other but not with production and maintenance employees. Although technicians do perform some of the same function as performed by the petitioned-for employees, the majority of their functions, albeit related to the production process, are generally different from those performed by production and maintenance employees. In addition, although there is some contact between technicians and the petitioned-for employees, this contact is not so sub-

stantial and regular as to compel their inclusion in the unit.

In *Penn Color*,⁷ the Board found appropriate the petitioned-for unit of production and maintenance employees, excluding quality control and development technicians. There, despite common vacation policies, holidays, pension plans, sick days, and "some" contact, the Board found that in view of the their separate supervision, absence of interchange, option of being paid on a salaried basis, and different requirements regarding educational background and on-the-job training, as well as the fact that the petitioner did not seek to include them in the unit, the quality control and research and development technicians' community of interest with production and maintenance employees was not sufficient to warrant including them in the unit. In *Beatrice Foods*,⁸ the Board sustained challenges to the ballots of quality control employees, despite the petitioner's urgings that those ballots be counted. The Board found that as they were separately supervised, separately located, and did not have regular contact with production employees, quality control employees did not share a sufficient community of interest with unit employees to enable them to be included in the unit.⁹

We are not unmindful that the Board has generally included quality control employees in production and maintenance units when a union has requested them, finding that their placement in the same unit does not create a conflict of interest.¹⁰ Here, there are factors present that would support adding the disputed em-

⁷ 249 NLRB 1117 (1980).

⁸ 222 NLRB 883 (1976).

⁹ *Kellogg Switchboard & Supply Co.*, 127 NLRB 64 (1960), and *W. R. Grace & Co.*, 202 NLRB 788 (1973), in which the Board included quality control employees over the petitioners' objections, were decided prior to the Board's decision in *Penn Color* and, therefore, have diminished precedential value. Moreover, both cases are distinguishable. In *Kellogg*, the Board simply concluded, with almost no explication, that the interests of the sole quality control technician were not sufficiently dissimilar from those of production and maintenance employees to justify his exclusion. In *W. R. Grace & Co.*, the Board overruled challenges to the ballots of quality control employees in view of their numerous contacts with unit employees and their integral role in the production process, and the fact that they were hourly paid, shared the same work breaks, lunch periods, and locker room with unit employees, punched a timeclock, received similar benefits, and had similar training. In *Blue Grass Industries*, 287 NLRB 274, 276-277 (1987), decided after *Penn Color*, the Board found that the circumstances compelled the inclusion of quality control inspectors in the unit of production employees. The Board found that their jobs were a vital part of the production plant, their pay and benefits were similar, and that there was significant interaction between the two groups of employees.

¹⁰ See *Blue Grass Industries*, supra; *W. R. Grace & Co.*, supra. In *Blue Grass*, the administrative law judge noted that "[a]lthough the important criterion is community of interest with bargaining unit members rather than the relationship of the job to the production process . . . the importance of quality control jobs in the production of garments is a further consideration when a community of interest has already been demonstrated." 287 NLRB at 299.

⁵ *Omni International Hotel*, 283 NLRB 475 (1987).

⁶ *E. H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

ployees to the petitioned-for unit, i.e., they perform production-related functions, have some contact with unit employees, have similar benefits and holidays, are not required to have special education or training, and some were formerly employed in production positions. Consequently, a unit including these employees might also have been an appropriate unit had such a unit been sought by the Petitioners. However, because, as previously stated, the disputed employees have separate supervision, are paid differently, do not interchange with the production and maintenance employees, have generally different functions, and have insubstantial and irregular contact with the requested production and maintenance employees, and as no labor organization is seeking to represent a broader unit including the disputed employees, we conclude that the quality assurance/lab technicians, temporary management trainees I, and lab technicians do not share such an overwhelming community of interest as to require their inclusion in the petitioned-for production and maintenance unit. *Penn Color*, supra.¹¹

Industrial Engineer and Industrial Engineer Trainees

The Employer's one industrial engineer and two industrial engineer trainees (collectively referred to as industrial engineers) do timestudies. In performing their timestudies, industrial engineers observe production employees, record the time it takes them to perform production functions, and make calculations to obtain standards for classifications and products. They also prepare layouts for new departments and/or new functions. While on the production floor, industrial engineers speak with production employees inquiring about any changes in their jobs since the prior audit, and eliciting any recommendations regarding the flow of the jobs. Industrial engineers spend half of their time in their office, located away from the production floor, and the other half in and around the production areas obtaining data. Although the data they generate affects the amount of wages and incentive pay received by production employees, industrial engineers make no recommendations regarding whether the standards calculated should result in a pay increase or incentive pay.

¹¹ By stating that we made our decision "in large part because the Petitioner does not seek to represent [the disputed employees]," our dissenting colleague is implying that we have given "controlling" weight to the Union's extent of organization, which is prohibited by Sec. 9(c)(5) of the Act. However, as is clear from the above, "the appropriateness of the proposed unit . . . is indicated by other clear and decisive factors, [and] there is no reason why the Union's decision to seek representation of employees on a narrower basis[] should preclude the Board from finding the smaller unit appropriate." *E. H. Koester Bakery Co.*, supra at 1012 fn. 16 (internal quotation marks omitted).

Industrial engineers are under the supervision of the senior and chief industrial engineers, who in turn report to the director of research and development. None of these three supervisors or managers supervise any production and maintenance employees. There are no education or technical prerequisites for becoming an industrial engineer; they are not required to possess any college education, and, at most, are required to take a few weeks of on-the-job training and pass a "common sense" test. They are compensated differently from production and maintenance employees.¹² There is no interchange between them and production and maintenance employees. Two industrial engineers were temporarily assigned to perform production tasks in a newly created production area until the Employer placed production employees in that area. These duties encompassed approximately 2 hours per week for 2 months. They also performed "leaker" checks on an as-needed basis, identical to those performed by production employees. Of the three industrial engineers employed at the time of the hearing, two had transferred from production and maintenance positions.

The Board has consistently found that timestudy employees are not supervisory, managerial, or confidential employees.¹³ Timestudy employees are often excluded from production and maintenance units by the parties,¹⁴ or found to be technical employees and either excluded from production and maintenance units under *Sheffield Corp.*¹⁵ or included in a separate technical unit with other technical employees,¹⁶ or given a separate unit.¹⁷ In the instant case, we find, contrary to the Regional Director, that industrial engineers do not

¹² One trainee testified that he had been earning \$7.66 per hour as a production employee in the bacon department. On becoming an industrial engineer, he earned \$375 per week but no longer received overtime.

¹³ See, e.g., *Case Corp.*, 304 NLRB 939 (1991). In the instant case, no party argues that industrial engineers should be excluded because they are supervisory, managerial, or confidential employees.

¹⁴ See, e.g., *Van Gorp Corp.*, 240 NLRB 615 (1979); *United Technologies Corp.*, 274 NLRB 504 (1985).

¹⁵ 134 NLRB 1101 (1961). See also *Reliable Castings*, 236 NLRB 315 (1978).

¹⁶ See, e.g., *Chrysler Corp.*, 192 NLRB 1208 (1971).

¹⁷ *Case Corp.*, supra; *Ford Motor Co.*, 66 NLRB 1317 (1946). Joint Petitioners assert that industrial engineers should be excluded because, inter alia, they are technical employees. Joint Petitioners claim that they have special skills, make determinations that directly affect production and maintenance employees' compensation, use independent judgment, are paid differently, and are separately supervised. Contrary to the Joint Petitioners, we find that industrial engineers are not technical employees. There is no evidence of any special requirements for becoming an industrial engineer, they receive minimal on-the-job training, and they do not appear to exercise independent judgment and discretion. Thus, we do not exclude the industrial engineers on that basis. Compare *Reliable Castings*, 236 NLRB 315 (1978). There, the Board found that timestudy employees were technical employees based on their special skills, their exercise of independent judgment, and their special education and training.

share a sufficiently strong community of interest with production and maintenance employees such that their inclusion in the petitioned-for unit is mandated. Indeed, the interests of the industrial engineers are separate and distinct from the interests of the production and maintenance employees.¹⁸ Industrial engineers are separately supervised; spend half of their time in their office, which is located away from the production floor; do not interchange with production and maintenance employees; and they are differently compensated. Further, industrial engineers primarily perform different functions from those performed by production and maintenance employees, even though their functions are related to the production process in that they ensure that the Employer's operations are carried out with maximum efficiency and at minimum cost. The occasional production tasks that industrial engineers may perform are only incidental to their primary function of calculating production standards, and there is no evidence that production employees ever perform the industrial engineers' functions. Moreover, although they have some contact with production and maintenance employees, this contact is limited to occasional questions about the workflow and does not justify their inclusion in the unit.

As is the case with respect to the quality assurance/lab technicians, there are some factors here which would support finding appropriate a production and maintenance unit including industrial engineers, should the Joint Petitioners have sought such a unit. Thus, industrial engineers perform production-related functions, have some contact with production and maintenance employees, share the same benefits and holidays, receive on-the-job training, and are subject to the same personnel rules. As noted above, however, the petitioned-for unit need only be an appropriate unit, and in this case there is no labor organization seeking to represent a broader unit including industrial engineers. We conclude that industrial engineers do not share such a close community of interest with the petitioned-for production and maintenance employees as to require their inclusion in the unit. See *Penn Color*, supra.

In summary, we reverse the Regional Director's supplemental decision with respect to his finding that the petitioned-for unit must also include quality assurance/lab technicians, temporary management trainees I, lab technicians, and industrial engineers, and we sustain the challenges to those employees' ballots. We deny the Joint Petitioners' request for review with

respect to the inclusion of the waste management operator. Finally, we find it unnecessary to consider the Joint Petitioners' request for review with respect to the receiver's alleged status as a guard. In light of our Decision sustaining the challenges to the ballots of the disputed employees listed above, we find it unnecessary to resolve the challenge to the receiver's ballot as his vote is not determinative of the election results.

ORDER

The Employer's request for review and motion to strike are denied. The Joint Petitioners' request for review is granted with respect to the Regional Director's finding that quality assurance/lab technicians, management trainees I, lab technicians, and industrial engineers must be included in the petitioned-for unit, his decision as to those employees is reversed, and the challenges to their ballots are sustained. In all other respects, the Joint Petitioners' request for review is denied, except that the challenge to the ballot cast by the receiver shall remain unresolved, as it is not determinative of the election results.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the Joint Petitioners, United Food and Commercial Workers Union, Local 204, AFL-CIO, and International Union of Operating Engineers, Local 465, AFL-CIO, and that the Joint Petitioners are the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees, janitorial employees, condensate drivers, waste management operators, raw material handler/cleaners, stockers, emergency room technicians, first aid attendants, kill gang leaders, and plant clericals, including inventory control section leaders, office clerks B & C (inventory control), distribution service section leaders, office supplies section leaders, and office clerks A, B & C (supplies/distribution) employed by the Employer at its Clinton, North Carolina facility, but excluding long-haul drivers, co-drivers, short-haul drivers, sales route drivers, permanent livestock drivers, temporary livestock drivers, outside buyers, hog buyers, assistant hog buyers, assistant hog buyers p.m., tire changers, vehicle mechanics, vehicle refrigeration mechanics, laborers (garage a.m. and p.m.), industrial engineers, industrial engineer trainees, laboratory technicians, quality assurance technicians, temporary management trainees I, process sales coordinators, trip audit entry section leaders, office clericals, confidential em-

¹⁸ Cf. *University of Hartford*, 295 NLRB 797 (1989). There, it was noted that in *Georgetown University*, 200 NLRB 215 (1972), the Board drew an analogy between such a "blue collar" unit in a university setting and the usual production and maintenance unit in the industrial areas, noting that such a unit normally does not include office clerical or technical employees with manual workers. 295 NLRB at 798 fn. 5.

employees, guards, and supervisors as defined in the Act.¹⁹

MEMBER STEPHENS, dissenting.

Contrary to the majority, I would affirm the Regional Director's determination that the Petitioners' challenges to the ballots of the quality assurance/lab technicians and lab technicians (QALTs) and the industrial engineer and industrial engineer trainees (IEs) should be overruled. The Board has routinely included quality control employees in production units when a community of interest between the two groups has been shown to exist. *Blue Grass Industries*, 287 NLRB 274, 299 (1987); *Owens-Illinois, Inc.*, 211 NLRB 939, 941 (1974); *W. R. Grace & Co.*, 202 NLRB 788, 789 (1973). This is particularly true where it has been established that quality control employees perform functions that are integral to the production process in addition to sharing a community of interest with the production employees. Moreover, the Board has included such employees in the unit on the basis of their community of interest without regard to the petitioning labor organization's desire to exclude them. *W. R. Grace & Co.*, supra. See also *Blue Grass Industries*, supra (quality control employees included in the production and maintenance unit contrary to the General Counsel's position; unclear which party challenged

their ballots). Cf. *Beatrice Foods*, 222 NLRB 883 fn. 3 (1976) (challenges to ballots of quality control employees sustained in view of lack of community of interest; unclear which party challenged their ballots).

In the instant case, the majority concedes that the QALTs share a community of interest with other employees in the production unit. Moreover, it is a given that the QALTs, who spend 80 percent of their time on the production floor, perform an integral function in the meat processing and packing operation. Notwithstanding the foregoing, the majority sustains the challenges to the QALTs' ballots in large part because the Petitioners do not seek to represent them. The majority takes the position that the QALTs can be included, over the Petitioners' objection, only when they have an "overwhelming" community of interest with the other unit employees. The only case cited for this proposition is *Penn Color*, 249 NLRB 1117 (1980) and that case does not set forth so stringent a test.

In sum, my colleagues disregard the precedent cited above and derogate the Board's policy against fragmenting production and maintenance units.

Similarly, a community of interest has been shown to exist between the IEs and the production unit employees. IEs spend 50 percent of their time on the plant floor and perform some unit work in addition to having the same holidays and benefits. For the reasons set forth by the Regional Director, I would include them in the unit as well.

¹⁹The receiver is neither included in nor excluded from the bargaining unit covered by the certification issued herein, inasmuch as we have not determined his alleged guard status.